

**Julco Fireproofing and Insulation Co. and Laborers
Local Union No. 157. Case 3-CA-16123**

November 25, 1992

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

SUPPLEMENTAL DECISION AND ORDER

On June 25, 1991, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, ordering Julco Fireproofing and Insulation Co. to adhere to the terms of its contract with Laborers Local Union No. 157 and to make whole its unit employees for failure to honor the terms of its contract in violation of Section 8(a)(1) and (5) of the National Labor Relations Act by making contributions into contractually required fringe benefit funds and by filing contractually required monthly report forms.

A controversy having arisen over the amount of reimbursement due, on March 31 and June 25, 1992, respectively, the Regional Director for Region 3 issued a compliance specification and notice of hearing and an amended compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with copies of the compliance specification and amended compliance specification, the Respondent has failed to file an answer.²

By letter dated May 18, 1992, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by close of business May 26, 1992, summary judgment would be sought.³

On October 22, 1992, the General Counsel filed with the Board a Motion to Transfer Case and to Continue Proceeding Before the Board and for Summary Judgment and Issuance of a Supplemental Decision and Order, with exhibits attached. On October 22, 1992, the Board issued an order transferring the pro-

ceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the amended compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification or the amended compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the amended compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net reimbursement due is as stated in the amended compliance specification and we will order payment by the Respondent of those amounts.

ORDER

The National Labor Relations Board orders that the Respondent, Julco Fireproofing and Insulation Co., Lockport, New York, its officers, agents, successors, and assigns, shall make whole bargaining unit employees by paying the various Laborers' funds the following amounts:

Welfare Fund	\$ 4,094.91
Pension Fund	3,943.23
Training Fund	667.32
Annuity Fund	1,516.63
Total	\$10,222.09

¹ 303 NLRB No. 78.

² Copies of the compliance specification and amended compliance specification that were sent to the Respondent by certified mail were returned to the Regional Office marked "unclaimed." The Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

³ A copy of this letter which was sent to the Respondent by certified mail was returned to the Regional Office marked "unclaimed." The Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, above. The Region also sent this letter by regular mail. This copy was not returned. The failure of the postal service to return documents served by regular mail indicates actual receipt of those documents by the Respondent. *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987).